

BOARD OF APPEALS CASE NO. 4962

BEFORE THE

APPLICANT: Maryland Country Club, Inc.

ZONING HEARING EXAMINER

REQUEST: Modification of Case No. 4708
and variance to reduce minimum building
or use setback; 1335 E. MacPhail Road,
Bel Air

OF HARFORD COUNTY

Hearing Advertised

Aegis: 8/25/99 & 9/1/99

HEARING DATE: October 13, 1999

Record: 8/27/99 & 9/3/99

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ZONING HEARING EXAMINER'S DECISION

The Maryland Country Club, Inc., (hereinafter the "Applicant" or the "Club"), appeared before the Hearing Examiner requesting Board of Appeals approval to:

1. Modify the special exception approval for a golf/country club and accessory uses granted in Board of Appeals Case No. 4708 pursuant to Sections 267-52(B) and (C) of the Harford County Zoning Code, located in the AG, Agricultural, R1 and R3 Residential Districts to relocate the existing accessory golf driving range/practice facility and develop a portion of the Club's property with single family residential dwellings as shown on the attached site plan.
2. Modify the site plan approved in Board of Appeals Case No. 4708 pursuant to Sections 267-52(B) and (C) of the Code, to include the relocated practice facility and to delete the portion of the Club's property to be developed with single family detached dwellings.
3. Obtain a variance pursuant to Section 267-11 of the Code from the provisions of Section 267-36(B) Table IV to permit the Club as modified to be operated with a minimum building or use setback of less than one hundred (100) feet from an adjacent residential lot (0 feet proposed).

The subject property is designated among the records of the State Department of Assessments and Taxation as Map 49, Grid 3E, Parcel 329; Map 49, Grid 3E, Parcel 731; Map 49, Grid 3F, Parcel 715; Map 49, Grid 3F, Parcel 208; Map 49, Grid 3E, Parcel 184; Map 50, Grid 2A, Parcel 57; and is zoned AG, Agricultural, and R-1 and R-3 Urban Residential.

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William E. Hughes, the General Manager of the Club testified that the Club had been originally built in the early 1960's and that over the years thirteen (13) separate parcels comprising approximately 190 acres had been acquired by the Club for its use. He explained that the Club consists of an 18 hole golf course, pool, tennis courts, golf practice facility and a clubhouse.

Mr. Hughes testified that the Club was requesting approval to modify the existing special exception granted to the Club in Case 4708 by changing the boundaries of the Club and adding a new practice facility ("New Facility"). He explained that the Club and 1022 South Fountain Green Road LLC, ("LLC") a limited liability company controlled by William Maloney, had entered into an agreement whereby the Club will convey approximately 5 acres of the Club's property adjoining the 18th fairway where the Club's current practice facility ("Current Facility") is located to the LLC to be used for residential building lots. In return, the LLC will convey approximately 13 acres of the LLC's property to the Club to be used as the site of the New Facility. Mr. Hughes noted that the New Facility would be operated in the same manner as the Current Facility, i.e., open only to members and their guests during daylight hours with no lighting proposed. He testified that the Current Facility does not meet the needs of the Club.

The witness stated that he was aware that portions of the New Facility and the new boundaries of the Club created by the conveyance of the 5 acres to the LLC were less than 100 feet from the lots to be developed by the LLC, and that accordingly, a variance from the Code was required. Mr. Hughes testified that Mr. Maloney advised him that the LLC had no objection to the requested variance.

Mr. Hughes said that based on information he received from Morris & Ritchie Associates, Inc., ("MRA") the Club's engineers, it was his understanding that the New Facility could not be redesigned or relocated such that the setback variances were not required and still meet the needs of the Club. Mr. Hughes said that, accordingly, denial of the requested variance would cause practical difficulty to the Applicant in that without it, the Club's request could not be granted.

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Mr. Hughes went on to say that granting the requested relief would not harm anyone in any way. Adequate landscaping will be provided along the boundaries of the New Facility and the 18th fairway to prevent golf balls from going on to adjoining properties. All setback requirements for existing homes in the area will be maintained. Mr. Hughes pointed out that residential lots have directly adjoined other areas of the Club's golf course for many years. He stated that no complaints about golf operations have been received from those lot owners.

Mr. Hughes testified that the conditions of approval recommended in the Department of Planning and Zoning's Staff Report issued in the case were acceptable to the Applicant.

Frank F. Hertsch, an expert civil engineer and site plan designer employed by MRA also testified. Mr. Hertsch explained that MRA prepared the site plan for the Club and the land of the LLC, which is to be developed as a residential subdivision to be known as Stone Ridge.

Mr. Hertsch said that the site of the New Facility is currently farmed. He testified that a berm and landscaping with mature trees is proposed around portions of the New Facility to prevent golf balls from entering onto adjacent properties. The witness pointed out that there is a 35-40 foot difference in elevation which will also help prevent golf balls from reaching adjoining properties. He explained that the requested setback variance is required only for homes to be built in Stone Ridge. No variance for any existing home will be required. The required 100 foot setback is maintained from the adjoining Woodland Greens subdivision. He noted that a 50 foot open space area will be maintained at the rear of the New Facility which will be landscaped. He pointed out that a large portion of the New Facility borders a Forest Retention Area which, although zoned R-1, will not be developed. He also testified that some of the existing trees located between the Current Facility and the Stone Ridge development will be maintained and new understory trees planted to prevent golf balls from entering onto the Stone Ridge property from the Club's new boundary along the 18th fairway.

Mr. Hertsch testified that it was not possible to redesign or relocate the New Facility without the requested variance. He noted that wetlands located on the LLC property prevented the New Facility from being located elsewhere and that a smaller practice facility would not meet the Club's needs. Since the New Facility should be located in close proximity to the clubhouse, there is no other feasible location.

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Mr. Hertsch testified that there was no reason from an engineering or zoning standpoint to prevent the Applicant from developing the property as proposed. He noted that residential lots which adjoin a golf course are very desirable and sought by homeowners. He indicated that the design, proposed screening plan and location of the New Facility will prevent use of the New Facility from being objectionable to adjoining property owners.

The Department of Planning and Zoning's Staff Report recommended conditional approval of the Applicant's request.

No protestants appeared in opposition to the Applicant's request.

CONCLUSION:

Section 267-36(B) Table IV Design Requirements for Specific Uses in the R1 District requires a minimum building or use setback from an adjacent residential lot of 100 feet.

Section 267-52(B) and (C) provide that:

- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.

The Code, pursuant to Section 267-11, authorizes the granting of variances provided the Board finds that (1) by reason of the uniqueness of the property or topographical conditions literal enforcement of Part 1 will result in practical difficulty or unreasonable hardship; and (2) the variance will not be substantially detrimental to adjacent properties and will not materially impair the purposes of this Part 1 or the public interest.

The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994) wherein the court stated:

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“In the zoning context the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

An example of uniqueness is found in the use variance case of Frankel v. Mayor and City Council, 223 Md. 97, 104 (1960), where the court noted: “He met the burden; the irregularity of the...lot...that it was located on a corner of an arterial highway and another street, that it is bounded on two sides...by parking lots and public...institutions, that immediately to its south are the row houses...”

Based on the testimony presented and the Staff Report, the Hearing Examiner finds that the request to modify the existing approved special exception for the Club as described by the Applicant’s witnesses would not adversely affect the public health, safety and general welfare, nor would it result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. All applicable Code requirements, with the exception of the requested variance, are met. The use of the Club will remain essentially unchanged if the Applicant’s request is approved. With the implementation of the berm and landscaping, the Club, as modified, can be conducted without adverse impact to adjoining property owners.

Based on the testimony provided by the Applicant and the evidence contained in the Staff Report, the Hearing Examiner finds that the subject property is unique, given its unusual configuration, its numerous component parcels, together with the topography in the area of the New Facility and the presence of non tidal wetlands on the subject property. No variances are required for existing adjoining residences. The proposed lots in Stone Ridge which will be located less than 100 feet from the Club as modified have not yet been created. Any owner of such a lot will buy his or her lot with knowledge of the modifications to the Club proposed by the Applicant.

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The Hearing Examiner finds that based on the evidence, granting the requested setback variances would not adversely affect adjoining property owners or the public interest. The proposed landscaping plan will ensure that the requested variance will have little or no impact on the surrounding neighborhoods or the intent of the Code. The Club has been operated with residential lots adjoining it for many years without complaint.

Furthermore, the evidence showed that the new lots could not be created from the Current Facility nor could the New Facility be redesigned or relocated and still meet the needs of the Club without the requested variance. Thus, the Hearing Examiner finds that denial of the variance would result in practical difficulty to the Applicant.

Based on the evidence, it is the recommendation of the Hearing Examiner that the Applicant's request to modify the approved special exception as shown on the site plan be approved, including the requested variance, subject to the following conditions:

1. The Applicant shall submit detailed site plans for the construction and layout of the driving range, berm and landscaping in both the driving range area and the area adjacent to the eighteenth hole.
2. The Applicant shall obtain all necessary State and County permits for the grading and construction of the driving range, and the berm to buffer the use from the residential uses.

Date OCTOBER 22, 1999



L. A. Hinderhofer
Zoning Hearing Examiner